Supreme Court, U.S.
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91-2070

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PEGGY STEENBERGEN, Individually and on Behalf of the Estate of JOSEPH RAY STEENBERGEN, Deceased; and JANET STEENBERGEN as Next Friend of JULIE ANN STEENBERGEN and JENNIFER JO STEENBERGEN, Minors,

Petitioners

v.

FORD MOTOR COMPANY,

Respondent

Petition for Writ of Certiorari to the Texas Court of Appeals for the Fifth District of Texas and Appendix

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QUESTION PRESENTED

Whether the state trial court violated the equal protection rights of the Petitioners by permitting the Respondent to utilize the services of employees and property of the State of Texas to help defeat the Petitioners' claim, when such services and property could not be utilized by the Petitioners.

PARTIES TO THE PROCEEDINGS BELOW

1. Peggy Steenbergen, Individually and on behalf of the Estate of Joseph Ray Steenbergen, Deceased; and Janet Steenbergen as Next Friend of Julie Ann Steenbergen and Jennifer Jo Steenbergen, Minors.
2. North River Insurance Company.
3. Ford Motor Company.
4. Transport Life Insurance Company.

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REFERENCE TO OPINIONS BELOW

The published opinion of the Texas Court of Appeals for the Fifth District of Texas is reproduced in Appendix A. Other pertinent information is reproduced in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fifth District of Texas was entered on June 18, 1991. The motion for rehearing was overruled on September 2, 1991. The Supreme Court of Texas denied an application for writ of error on February

19, 1992, and overruled the motion for rehearing of the application for writ of error on March 25, 1992.

The Supreme Court of the United States has jurisdiction to grant this Petition and review the decision of the Texas Court of Appeals under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

STATEMENT OF THE CASE

The Petitioners (the Steenbergen family) sued Ford Motor Company for the wrongful death of Joseph Ray Steenbergen in an automobile collision (Tr. 198). The suit was based on negligence and products liability theories (Tr. 200-07). The Petitioners believe that Mr. Steenbergen's death was directly caused by the design of the Ford LTD he was driving. The steering column crushed his chest and that was the ultimate cause of his death (S.F. Vol. V, p. 576-1).

The jury was asked whether Ford defectively designed the LTD being driven by Mr. Steenbergen, because of the absence of a driver air bag restraint system or a driver automatic seatbelt restraint system, and whether the steering column was defectively designed (Tr. 397). The jury answered "no" to each

of those inquiries (Tr. 397). The trial court entered judgment for Ford (Tr. 410).

Early in the trial, the Petitioners learned that the Respondent had made special arrangements with the official court reporter, an employee of the State of Texas, to purchase from her a daily transcript of the testimony (S.F. Vol. V, p. 615-1). The trial court permitted this procedure, extra reporters were hired, and three reporters alternated in the taking of testimony during the day (S.F. Vol. V, pp. 621-1 – 622-2). Two of the court reporters were official court reporters, one employed by the trial court and one employed by the 160th District Court of Dallas County (S.F. Vol. V, pp. 621-1 – 622-1). The third court reporter was a freelance reporter (S.F. Vol. V, pp. 621-1 – 622-1). The 160th District Court reporter hired a substitute reporter to assist as needed for that court, while she was paid by the Respondent to prepare daily copy in this case (S.F. Vol. V, pp. 621-1 – 622-1; Vol. VI, pp. 783-86). In addition to utilizing state employees, the Respondent used state property to produce its daily record.

The Petitioners could not afford to purchase daily copy, and the trial court denied their request to be provided with free daily copy (S.F. Vol. V, pp. 616-1 – 620-1; Vol. VI, p. 761). The Petitioners objected because, among other things, the combination of the procedure employed by Ford and the denial of free daily copy to the Petitioners constituted a denial of equal protection and due process to the Petitioners, in violation of the Fourteenth Amendment (S.F. Vol. V, pp. 615-1 – 616-1, 621-1; Vol. VI, p. 758; Vol. VIII, p. 1164). The trial court overruled these objections (S.F. Vol. V, p. 619-1; Vol. VI, p. 761; Vol. VIII, p. 1164).

The Petitioners pursued their equal protection claim in their appeal to the Texas Court of Appeals for the Fifth District at Dallas. The Texas Court of Appeals rejected this claim. (App. A-14). The Petitioners filed an application for writ

of error with the Supreme Court of Texas to review the decision of the Texas Court of Appeals. Without written opinion, the Texas Supreme Court denied both the application for writ of error and the motion for rehearing of the application for writ of error. (App. B-1-2, B-3-4). This petition is timely presented seeking reversal of the decision of the Texas Court of Appeals.

REASONS FOR GRANTING THE WRIT

The Texas Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. That question is whether the equal protection rights of a party are denied when a trial court permits a party to utilize the state's employees and property to help defeat an opponent's claim, when the employees and property could not be utilized by the opponent.

The Texas Court of Appeals based its rejection of the Petitioners' equal protection claim largely on the fact that the authorities relied on by Petitioners dealt primarily with criminal trials or appeals. (App. A-14). This distinction is illusory. The critical factor in determining whether litigants have been deprived of their equal protection rights is whether state action is involved, not whether the state action took place in a criminal, rather than civil, proceeding. *Cf. Edmonson v. Leesville Concrete Co., Inc.*, ___ U.S. ___, ___, 111 S.Ct. 2077, 2082-87, 114 L.Ed.2d 660 (1991) (equal protection rights of excluded jurors, formerly recognized only in criminal cases, extended to civil cases upon finding of state action). In this case, the focus of Petitioners' complaint is the trial court's permitting the Respondent to use state property and employees while effectively denying the same rights to the Petitioners. At a minimum, the State should have provided the Petitioners with a copy of that which it provided to the Respondent. State action is unquestionably present.

Within the judicial arena, the procedures or rights that are afforded may not be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause. *See Griffin v. Illinois*, 351 U.S. 12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1956). Because the trial court denied the Petitioners' request to be provided with a free copy of the daily transcript, and Petitioners had no other means to obtain the transcript, the procedure employed by the trial court violated the equal protection and due process rights of the Petitioners.

The unconstitutionality of the procedure employed in this case is best demonstrated by reference to decisions in related areas. For example, if appellate review is permitted, it may not be burdened with financial requirements that foreclose review for the poor. *See Lindsey v. Normet*, 405 U.S. 56, 77-80, 92 S.Ct. 862, 876-77, 31 L.Ed.2d 36 (1972). And, while the Equal Protection Clause does not require absolute equality between litigants, the judicial system must be free of unreasoned distinctions and the courts must not be effective for the rich but a meaningless ritual for the poor. *See Ross v. Moffitt*, 417 U.S. 600, 610-13, 94 S.Ct. 2437, 2444-45, 41 L.Ed.2d 341 (1974).

Consistent with that view, the Second Circuit has held that a trial court abuses its discretion by denying a free daily transcript to an indigent defendant when the government is receiving one. *United States v. Bari*, 750 F.2d 1169, 1181-82 (2d Cir. 1984), *cert. denied*, 472 U.S. 1019 (1985).

The principles and reasoning of the foregoing cases are applicable here. It is a patent violation of equal protection when the State, through its trial courts, allows and condones a wealthy private defendant's purchase of daily transcripts to be used to attack the plaintiffs' witnesses, but denies free transcripts to the plaintiffs who cannot afford to purchase them. The use of the daily copy supplied to Respondent in part

by the State, but not to the Petitioners, gave Respondent a substantial advantage in its cross-examination of the Petitioners' key witness, in various discussions with the trial court, and in final argument. (*See, e.g.*, S.F. Vol. VIII, pp. 1190-92; Vol. IX, pp. 1551-53; Vol. X, p. 1785). In a trial as lengthy and as complex as this case involved, this advantage cannot be underestimated. This advantage could have, and should have, been neutralized, either by providing the same daily copy to the Petitioners or by not permitting the use of state employees and property to aid the Respondent.

CONCLUSION

When the state courts tell a corporate defendant that it may distort the fairness of trial proceedings simply by spending more money than its opponent possibly can, the Supreme Court should recognize the constitutional evil that has been sanctioned: a subversion of equal protection rights.

For the foregoing reasons, Petitioners respectfully request the Supreme Court to grant this Petition for Writ of Certiorari and grant to them all relief to which they are entitled.

Respectfully submitted,

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